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KERAJAAN NEGERI SELANGOR v. SURUHANJAYA PILIHAN RAYA MALAYSIA & ORS (NO 3)

HIGH COURT MALAYA, KUALA LUMPUR
AZIZUL AZMI ADNAN J
[JUDICIAL REVIEW NO: WA-25-186-10-2016]
B 13 DECEMBER 2017

ELECTION: *Election Commission – Review of constituencies – Challenge against proposed recommendations on review of division of Federal and State constituencies in Selangor – Whether proposed recommendations violated art. 113(2) of Federal*
C *Constitution read together with s. 2(c) and (d) of Thirteenth Schedule – Whether proposed recommendations based on current electoral rolls – Whether electoral roll used in delimitation exercise defective – Whether information and particulars in s. 4 notice adequate – Whether curial intervention warranted*

D The applicant, the State Government of Selangor, sought to challenge the proposed recommendations of the Election Commission ('EC') in connection with its review of the division of the Federal and State constituencies in Selangor. In challenging the s. 4 of the Thirteenth Schedule to the Federal Constitution ('FC') notice published by the EC, the applicant cited the following grounds: (i) the proposed recommendations violated art. 113(2) of
E the FC read together with paras (c) and (d) of s. 2 of the Thirteenth Schedule to the FC which resulted in malapportioned and gerrymandered constituencies in the State of Selangor; (ii) the proposed recommendations were not based on the current electoral rolls, as required by s. 3 of the Thirteenth Schedule; (iii) the electoral roll used by the EC in the delimitation
F exercise was defective as there were 136,272 voters on the electoral roll in respect of whom there were no addresses on the record of the roll and therefore, the notice setting out the proposed recommendations was liable to be set aside; and (iv) there was inadequate information and insufficient particulars in the s. 4 notice, which impaired the rights of voters to make
G meaningful representations in response to the notice and which made the right to make such representations merely illusory. This violated the rules of natural justice and the legitimate expectation of voters in the State of Selangor, the local authorities and the State Government. In resisting the first ground of challenge, the respondents raised the following arguments: (i) the
H subject matter of the review did not fall within O. 53 r. 2(4) of the Rules of Court 2012 ('the ROC'); (ii) the proposed recommendations of the EC were not amenable to judicial review; and (iii) the proper forum for the objections that constituencies were malapportioned or gerrymandered were at the local inquiries.

I

Held (dismissing application with no order as to costs):

(1) Although it was argued by the applicant that the respondents were precluded from asserting that the matters in dispute were non-justiciable by deciding not to offer arguments at the leave stage, the respondents were not prevented from raising the issue of justiciability at the substantive hearing. Not all the grounds of challenge turned in the issue of justiciability and therefore not all could have been disposed of at the leave stage. Further, the party asserting judicial *estoppel* need not be the same party in the prior proceeding but, the party against whom judicial *estoppel* is being asserted must, as a matter of necessity be the same. On the facts, counsel who appeared for the Attorney General's Chambers ('the AGC') in the application for leave, appeared on behalf of the respondents in the substantive hearing. Also, no arguments were put forward by the AGC and therefore, the issue of justiciability had not been finally determined at the leave stage. (paras 21-25)

(2) The provisions of written law must be read in a cohesive manner and the courts are bound to give meaning to the words used in the statute and cannot treat such words as mere tautology or surplusage. Meaning must therefore be given to the words 'action' and 'omission' as used in O. 53 r. 2(4) of the ROC. In order for the applicant to be able to avail itself of the provisions of O. 53 r. 2(4), its legal rights must be adversely affected by the actions taken by the EC. The proposed recommendations of the EC were not binding and did not have legal effect as they were mere recommendations to be acted upon ultimately by the Parliament. It would follow that the applicant's rights would not be adversely affected by their publication. Therefore, the applicant was not entitled to challenge the constitutionality or reasonableness of the proposed recommendations issued by the EC by reason that they had failed to adhere to the principles set out in s. 2(c) or s. 2(d) of the Thirteenth Schedule to the FC. (paras 35-37 & 40)

(3) Under s. 3 of the Thirteenth Schedule, the EC must refer to the 'current electoral rolls' to ascertain the number of electors for the purposes of its review of the constituency boundaries. At the point the review exercise, chaired by the Secretary to the EC, the third respondent, was commenced on 14 July 2016, the current electoral roll was the principal roll (published on 13 May 2016). As long as no supplementary electoral roll has been published, the current electoral roll would be the latest principal electoral roll that has been published. Neither the first supplementary roll nor the second supplementary roll had been published yet as at that date. Therefore, the second ground for challenge was dismissed. (paras 64, 68, 71, 75 & 77)

(4) Although the electoral roll relied upon for the purposes of s. 4 notice did not have the complete street addresses of all the electors in the State of Selangor, it had the locality codes for each elector. In a delimitation exercise, the locality code of an elector does not change. Therefore, as the EC had the locality codes for all electors and because the granularity of the delimitation exercise did not go beyond locality, the locality codes were sufficient in order for the EC to discharge its obligations under Part VIII of the FC. Nevertheless, the correctness of an electoral roll cannot be subject to any challenge in court due to s. 9A of the Elections Act 1958, even where the roll may not completely record the addresses of all the electors in a unit of review. Hence, the applicant's third ground of challenge was dismissed. (paras 81, 84 & 99)

(5) The object of the court's inquiry was not whether the EC has adhered to international best practices for transparency in its proposed recommendations, but rather, whether it had committed a reviewable error in failing to provide information critical to an elector to make an informed representation at the local enquiry process. The information provided by the EC in its proposed recommendations published pursuant to s. 4 notice was not inadequate as to warrant curial intervention. Under the Thirteenth Schedule, the duty of the EC is to receive representations objecting to the proposed recommendations from parties that are entitled to object. Having received such objections, the EC is to hold a local enquiry for each constituency in respect of which it had received objections. There was no duty to take into account public opinion prior to the formulation of the proposed recommendations. (paras 87, 97 & 99)

Case(s) referred to:

Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals [2012] 1 CLJ 805 FC ***(refd)***

Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***

Leisure Farm Corporation Sdn Bhd v. Kabushiki Kaisha Ngu & Ors [2017] 1 LNS 499 CA ***(refd)***

M Kula Segaran & Satu Lagi lwn. Suruhanjaya Pilihan Raya Malaysia & Yang Lain [2018] 5 CLJ 547 CA ***(refd)***

Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***

Peguam Negara Malaysia v. Chan Tsu Chong & Ors [2018] 2 CLJ 274 CA ***(refd)***

Peguam Negara Malaysia v. Nurul Izzah Anwar & Ors [2017] 5 CLJ 595 CA ***(refd)***

Pengerusi Suruhanjaya Pilihanraya Malaysia v. See Chee How & Anor [2015] 8 CLJ 367 CA ***(refd)***

R (Moseley) v. Haringey LBC [2014] UKSC 56 ***(dist)***

R v. Brent LBC, ex p Gunning [1985] 84 LGR 168 ***(refd)***

Teng Chang Khim v. Badrul Hisham Abdullah & Anor [2017] 9 CLJ 630 FC ***(dist)***

WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd [2012] 4 CLJ 478 FC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 72(1), 113(2), (3A), (9), 114(1), (2), 115(1), Thirteenth Schedule ss. 2(c), (d), 3, 4, 8
Elections Act 1958, ss. 7(2), 9A
Elections (Registration of Electors) Regulations 2002, regs. 11, 24
Rules of Court 2012, O. 53 r. 2(4)
Rules of the High Court 1980, O. 53 r. 2(4)

For the applicant - Cyrus Das, Ambiga Sreenevasan, Derek Fernandez, Latheefa Koya & Lim Wei Jiet; M/s Daim & Gamany
For the respondents - Amarjeet Singh, Alice Loke, Suzana Atan, Shamsul Bolhassan, Azizan Md Arshad & Nik Azrin Zairin Nik Abdullah; SFCs

Reported by S Barathi

JUDGMENT

Azizul Azmi Adnan J:

Introduction

[1] The applicant, the State Government of Selangor, sought to challenge the proposed recommendations of the Election Commission in connection with its review of the division of the Federal and State constituencies in Selangor. The first respondent, in this case, is the Election Commission. The second and third respondents are its Chairman and Secretary respectively.

[2] Leave to commence a judicial review application was granted on 16 December 2016. No arguments were offered by the Attorney General's Chambers to oppose the application for leave.

Background

[3] On 15 September 2016, the Election Commission published a notice entitled "Notice of Proposed Recommendations for the Federal and State Constituencies in the States of Malaya as reviewed by the Election Commission in 2016".

[4] Under art. 113(2) of the Federal Constitution, the Commission has the power and obligation to undertake a review of the boundaries of the Federal and State constituencies at intervals of no less than eight years. Once it commences a review, the review must be completed within two years. Section 4 of the Thirteenth Schedule to the Federal Constitution requires the effect of any proposed recommendation arising from such review to be set out in a notice. The 15 September 2016 notice was one such notice.

[5] Once the notice is published, the provisions of the Thirteenth Schedule permit certain persons to object to any proposed alteration to a constituency boundary. These persons include any Government of any of the States of the Federation. Upon receiving representations from persons who are entitled to object, the Election Commission must hold a local enquiry in respect of each of the affected constituencies.

[6] The Election Commission may revise its recommendations after holding the local enquiries. If it does so, it must publish a second notice setting out the effect of its proposed (and revised) recommendations. A second round of local inquiries is then held.

[7] Thereafter, the Commission must submit a report to the Prime Minister setting out its recommendations on the division of the electoral boundaries, pursuant to the provisions of s. 8 of the Thirteenth Schedule. The Prime Minister is thereafter to table the report before the House of Representatives, together with a draft order giving effect, with or without modifications, to the recommendations in the report.

[8] The draft order is subject to the approval of the House of Representatives. A resolution is carried if it is "supported by the votes of not less than one-half of the total number of members of that House", which suggests that a majority is not needed; it suffices if exactly half of the total number of Parliamentarians approve. If approved, the draft order is then presented by the Prime Minister to the Yang di-Pertuan Agong, who then makes an order in accordance with the terms of the draft. The Federal Constitution does not contemplate the ability of His Majesty to refuse such order.

[9] It will be apparent from the preceding paragraphs that the final decision regarding the delimitation exercise is made by Parliament. The Election Commission merely recommends to the Head of the Executive, who then tables the recommendations for approval of the Legislature. A public inquiry process is provided for in the Constitution, but it is not a public consultation process, rather it is one where objections are heard from persons who are qualified to object.

The Grounds For Challenge

[10] The State of Selangor cited four grounds upon which it sought to challenge the s. 4 notice published by the Election Commission. They are as follows:

(a) the proposed recommendations violate art. 113(2) of the Federal Constitution, read together with paras. (c) and (d) of s. 2 of the Thirteenth Schedule to the Federal Constitution. It was contended that the proposed recommendations have resulted in malapportioned and gerrymandered constituencies in the State of Selangor;

(b) the proposed recommendations are not based on the current electoral rolls, as required by s. 3 of the Thirteenth Schedule;

(c) the electoral roll used by the Commission in the delimitation exercise is defective as there are 136,272 voters on the electoral roll in respect of whom there are no addresses on the record of the roll. Accordingly, argued counsel for the applicant, the notice setting out the proposed recommendations is liable to be set aside; and

(d) there was inadequate information and insufficient particulars in the s. 4 notice, which impaired the rights of voters to make meaningful representations in response to the notice and which made the right to make such representations merely illusory. This, it was claimed, violated the rules of natural justice and the legitimate expectation of voters in the State of Selangor, the local authorities and the Government of the State.

[11] Each of these grounds are considered in turn in the following paragraphs.

Ground 1: Article 113(2) Of The Federal Constitution And Sections. 2(b) And 2(c) Of The Thirteenth Schedule

[12] The applicant contended that the proposed recommendations violate art. 113(2) of the Federal Constitution, read together with s. 2(c) and s. 2(d) of the Thirteenth Schedule to the Constitution. This failure to adhere to the mandatory provisions of the Constitution – it was argued – has resulted in malapportioned and gerrymandered constituencies in the State of Selangor and was *ultra vires* the Constitution.

[13] Article 113(2) provides for the responsibility of the Election Commission to conduct a periodical review of the constituency boundaries in Malaysia. This review is referred to in practice as a "delimitation exercise". Article 113(2) States:

> (2) (i) Subject to paragraph (ii), the Election Commission shall, from time to time, as they deem necessary, review the division of the Federation and the States into constituencies and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteenth Schedule; and the reviews of constituencies for the purpose of elections to the Legislative Assemblies shall be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives.
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> (ii) There shall be an interval of not less than eight years between the date of completion of one review, and the date of commencement of the next review, under this Clause.
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> (iii) A review under paragraph (i) shall be completed within a period of not more than two years from the date of its commencement.

[14] The object of the delimitation exercise, as spelt out in art. 113(2) is "to comply with the provisions contained in the Thirteenth Schedule" to the Constitution. Section 2 of the Thirteenth Schedule provides for the principles that are to be taken into account by the Election Commission in undertaking a delimitation exercise:

> 2. The following principles shall as far as possible be taken into account in dividing any unit of review into constituencies pursuant to the provisions of Articles 116 and 117:

A (a) while having regard to the desirability of giving all electors reasonably convenient opportunities of going to the polls, constituencies ought to be delimited so that they do not cross State boundaries and regard ought to be had to the inconveniences of State constituencies crossing the boundaries of federal constituencies;

B (b) regard ought to be had to the administrative facilities available within the constituencies for the establishment of the necessary registration and polling machines;

(c) the number of electors within each constituency in a State ought to be approximately equal except that, having regard to the greater C difficulty of reaching electors in the country districts and the other disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies;

(d) regard ought to be had to the inconveniences attendant on alterations of constituencies, and to the maintenance of local ties.

D **[15]** The first observation that may be made is that the provisions of the Constitution make it clear that the Commission has a discretion to make recommendations, due to the use of the phrase "as they may think necessary" in art. 113(2). There is also a further discretion imparted upon the Commission to take into account the cardinal principles in s. 2, due to the E use of the phrase "shall as far as possible be taken into account" in the opening words of s. 2. At the same time, it is also clear from art. 113(2) itself that the object of the delimitation exercise is to attain adherence to the cardinal principles and generally to the provisions of the Thirteenth Schedule. If that discretion is exercised for a purpose other than this, the F exercise of that discretion would be in contravention of the terms of the Constitution.

[16] Virtually, all democratic forms of Government entails the election of a Legislature that is representative of the people. To ensure that the Legislature is truly representative of the populace, the value apportioned to G each vote must be regulated in some way to prevent unacceptable disparity arising. It is for this reason that s. 2(c) of the Thirteenth Schedule to the Federal Constitution provides that the value of votes ought to be approximately equal. In a *Westminster*-style representative democracy (such as ours), it will not be possible for the value of all votes to be exactly equal, H and hence the Federal Constitution makes allowances for the practical difficulties posed by social and geographical factors.

[17] In the affidavits deposed in support of the application, the applicant provided evidence of matters that they contended provided proof that there had been malapportionment and gerrymandering of the constituency I boundaries. The respondents elected not to engage the applicant on these points, but instead advanced the argument that the matters complained of were non-justiciable.

[18] I therefore found that the allegations put forward by the applicant to have been made out, to the extent that they are supported by credible evidence and to the extent that they have not been specifically refuted by the respondents. It is well settled that in evaluating affidavit evidence, where one party makes a positive assertion upon a material issue, the failure of the other party to contradict it is usually treated as an admission by that other party of the fact so asserted: *Ng Hee Thoong & Anor v. Public Bank Bhd*[1]. In the present case, no arguments were put forward for the respondents as to why I ought not treat their failure to contradict as admissions of the facts in issue.

[19] For this reason, it will not be necessary for me to delve into great detail regarding the contentions of malapportionment and gerrymandering, save to mention them in gist in order that an understanding is obtained of the general tenor of the allegations:

(a) the ratio of the largest to smallest parliamentary constituency in Selangor increased from 3.29:1 under the previous delimitation exercise to 4.05:1 under the current proposals, with the largest constituencies up to about 60% larger in number from the State average, and the smallest up to 60% smaller than the average. The disparity in electorate size is similar in the State constituencies, where the largest State constituency has 4.39 times the number of voters of the smallest, up from 3.70:1 in May 2003 when the last delimitation exercise was carried out. It was contended by the applicant that the current proposals offend the approximately equal principle in s. 2(c);

(b) the manner of apportionment has resulted in the disruption of local ties (and thus offended the maintenance of local ties principle set out in s. 2(d)), such as:

(i) instances where constituencies span across the jurisdiction of up to four local authorities;

(ii) local communities without common interests being grouped together (such as, to quote a single example out of the many cited by the applicant, the voters in Pulau Ketam being grouped together with voters from an industrial area in Klang under the Selat Klang State constituency rather than with those in the neighbouring port constituency of Pelabuhan Klang. The contention was that the villagers in Pulau Ketam would have stronger local ties with the voters in the latter constituency as they are both reliant upon a maritime economy); and

(iii) the bisection of local communities or neighbourhoods by the proposed electoral boundaries;

(c) a transfer of voters affected by the transfer of polling districts between State constituencies that had the effect of increasing the number of constituencies that have more than 60% Malay voters from 17

constituencies in 2013 to 30, and at the same time increasing the number of constituencies that have more than 60% Chinese voters from five to eight. The charge here was that the proposed constituency boundaries had the effect of increasing racial polarity in the majority of State constituencies in Selangor; and

(d) the transfer of polling districts between State constituencies in Selangor calculated to increase the number of safe and marginal seats for Barisan Nasional. The effects of the transfer of these polling districts between constituencies were able to be assessed by utilising historical voting data at the polling district level from the 2013 general elections.

[20] Senior Federal Counsel for the respondents raised three arguments to resist this first ground of challenge:

(a) the subject matter of the review did not fall within O. 53 r. 2(4) of the Rules of Court 2012;

(b) the proposed recommendations of the Election Commission are not amenable to review; and

(c) the proper forum for the objections that constituencies are malapportioned or gerrymandered is at the local inquiries.

[21] In the course of arguments, counsel for the applicant submitted that it would not be open to Senior Federal Counsel to contend that the subject matter was not amenable to review; that question ought to have been taken up at the leave stage of the proceedings, in accordance with the Federal Court decision in *WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd*[2]. It will be recalled that during the hearing of the application for leave on 16 December 2016, the Attorney General's Chambers did not offer any argument in opposition to the leave application. Thus it was argued that, by deciding not to offer arguments at the leave stage, the respondents are now precluded from asserting that the matters in dispute are non-justiciable.

[22] Reliance was placed by the applicants on the doctrine of judicial estoppel, applied by the Court of Appeal in *Leisure Farm Corp Sdn Bhd v. Kabushiki Kaisha Ngu*[3]. The doctrine of judicial estoppel prevents a party from asserting a position that is inconsistent with a position that that party had successfully and unequivocally asserted in prior proceedings. Judicial estoppel may be applied even if detrimental reliance or privity does not exist, unlike equitable estoppel. This distinction reflects the difference in the policies served by the two rules: equitable estoppel protects litigants from less than scrupulous opponents, while judicial estoppel is intended to protect the integrity of the judicial process.

[23] I am of the view that the respondents are not prevented from raising the issue of justiciability at the substantive hearing, in part because not all the grounds of challenge turned on the issue of justiciability and therefore not all could have been disposed of at the leave stage. Some required affidavits

to be deposed in support of the respondents' case. It was therefore entirely reasonable for the decision to have been made for objections against the application for review to be heard at a single hearing.

[24] The second reason is that, strictly speaking, when Dato' Amarjeet appeared before me in December last year at the application for leave, he was acting for the Attorney General's Chambers representing the public interest. Before me at the substantive hearing, he appeared on behalf of the respondents, the Election Commission and its two senior officers. The action undertaken on behalf of one entity cannot operate to bind another. The party asserting judicial estoppel need not be the same party in the prior proceedings, but the party against whom judicial estoppel is being asserted must, as a matter of necessity, be the same.

[25] Thirdly, because no arguments were put forward by the Attorney General's Chambers, I am of the view that the issue of justiciability had not been finally determined at the leave stage. Judicial estoppel would apply only if there had been an unequivocal assertion at the prior proceedings. No such assertion was made there, as no arguments were offered.

[26] It was advanced for the applicant that the Court of Appeal case of *Peguam Negara Malaysia v. Nurul Izzah Anwar & Ors*[4] had observed that the matters in this case disclosed an arguable case at the substantive hearing. In that case, the respondents had withdrawn their challenge on the constitutionality of the s. 4 notice after leave to commence judicial review proceedings had been granted by this court. The issue that remained was thus solely limited to the manner in which the local enquiry had been conducted by the Election Commission at the Lembah Pantai constituency. Delivering the judgment of the Court of Appeal, Idrus Harun JCA stated as follows:

> It is legitimate at this stage to have regard to the respondents' application herein which was grounded only on the issues of the constitutionality of the notice and proposed recommendations and the legality of the local enquiry conducted by the EC. The issue relating to the electoral roll is conspicuously not an issue in the present application. With the withdrawal of the issue of the constitutionality of the notice and the proposed recommendations, the application for judicial would now be limited and confined solely to the issue of the legality of the local enquiry. Learned counsel for the respondents did not seem to realise that this issue was completely different from the issues raised in the Selangor Government case. Since the issues raised in the Selangor case might disclose an arguable case at the substantive hearing stage that would require the attorney general to refute the various allegations raised in the application by way of affidavit evidence to be filed, the attorney general did not in consequence raise an objection to the application for leave.

[27] The contention advanced by the respondent applicants was that the Attorney General's Chambers was prevented by the operation of the principle of judicial estoppel from raising the justiciability of the challenge, because no objections had earlier been put forward at the leave stage in this

case, the Selangor State challenge. The Court of Appeal rejected this argument in part because the grounds of challenge were different in the two cases.

[28] In my view, the observations of the Court of Appeal were entirely correct, that certain grounds of challenge in this case (for example, the second ground of challenge) required affidavit evidence to be put forth in order to resist the application for judicial review. It was on this basis that no submissions were offered at the leave stage. That, however, does not mean that the respondents ought to be precluded from raising the issue of whether the matters in other grounds of challenge (specifically grounds one and three) were not amenable to review, for the reasons I have explained at paras. 23 to 25 *ante*.

[29] In the following paragraphs, I deal with the three arguments raised by Dato' Amarjeet to resist the first ground of challenge.

The Scope Of Order 53 Rule 2(4) Of The Rules Of Court 2012

[30] Senior Federal Counsel cited the case of the *Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals*[5] *(the Video Clip Commission* case) for the proposition that the recommendations of a body that does not make any decision would not be amenable to judicial review. It was argued that, because the Election Commission is not a decision-making authority but merely makes recommendations, the present application by the State of Selangor does not fall within the scope of O. 53 r. 2(4) of the Rules of Court 2012.

[31] The provision in O. 53 r. 2(4) of the Rules of Court 2012 previously reads as follows:

> (4) Any person who is adversely affected by the decision of any public authority shall be entitled to make the application.

[32] This provision was however amended *via* P.U. (A) 232/2012 with effect from 1 August 2012. Sub-rule (4) now reads:

> (4) Any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application.

[33] The decision of the Federal Court in the *Video Clip Commission* case was delivered when the applicable provision was governed under the Rules of the High Court 1980. Order 53 r. 2(4) of the Rules of the High Court 1980 was in *pari materia* with the previous O. 53 r. 2(4) of the Rules of Court 2012, prior to the amendment pursuant to P.U. (A) 232/2012.

[34] Accordingly, the *ratio decidendi* of the *Video Clip Commission* case that only decisions of public authorities are amenable to review would be limited to cases decided under the previous provision of O. 53 r. 2(4). Any person who is affected by any act or omission in relation to the exercise of a public duty or function may now make an application for review. In my judgment, the publication of the notice setting out the proposed recommendations of the Election Commission is sufficient to amount to an action, within the meaning of O. 53 r. 2(4) of the Rules of Court 2012.

[35] The applicable principles of construction are well settled. The provisions of written law must be read in a cohesive manner and the courts are bound to give meaning to the words used in the statute and cannot treat such words as mere tautology or surplusage. In the case of *Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors*[6], the Supreme Court had held as follows:

> On the presumption that Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded. In *Quebec Railway, Light, Heat and Power Co Ltd v. Vandry* [1920] AC 662, Lord Sumner in delivering the judgment of the Judicial Committee said (at p. 676):
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> > Secondly, there is no reason why the usual rule should not apply to this as to other statutes – namely, that effect must be given, if possible, to all the words used for the legislature is deemed not to waste its words or to say anything in vain.

[36] Meaning must therefore be given to the words "action" and "omission" as used in O. 53 r. 2(4). Accordingly, the mere fact that the Election Commission does not make any decision on the constituency boundaries but merely proposes recommendations does not of itself preclude judicial review of those proposed recommendations.

[37] However, in order for the State of Selangor to be able to avail itself of the provisions of O. 53 r. 2(4), its legal rights must have been adversely affected by the actions taken by the Election Commission. Two recent decisions of the Court of Appeal have established the position that the proposed recommendations of the Election Commission contained in a notice published pursuant to s. 4 of the Thirteenth Schedule are not binding and do not have legal effect, as they are mere recommendations to be acted upon ultimately by Parliament. If they do not have any legal effect, it would follow that Selangor's rights would not be adversely affected by their publication.

[38] In *Peguam Negara Malaysia v. Chan Tsu Chong*[7], the Court of Appeal heard an appeal by the Attorney General against the decision of the High Court to grant leave to the respondents to commence judicial review

proceedings. The respondents in that case, who were electors in the State of Melaka, raised similar grounds as in this case to challenge the proposed recommendations of the Election Commission. The Court of Appeal allowed the appeal, holding as follows:

> [44] The penultimate [*sic*] decision maker in this delimitation exercise is the House of Representatives. The Federal Constitution confers on the House of Representatives the constitutional duty either to approve or reject the proposed recommendations (see section 10, 11, Thirteenth Schedule):
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> 10. If any draft Order referred to in section 9 is approved by the House of Representatives by resolution supported by the votes of not less than one-half of the total number of members of that House, the Prime Minister shall submit the draft Order to the Yang di-Pertuan Agong.
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> 11. If a motion for the approval of any draft Order referred to in section 9 is rejected by the House of Representatives, or is withdrawn by leave of the House, or is not supported by the votes of not less than one-half of the total number of the members of the House, the Prime Minister may, after such consultation with the Election Commission as he may consider necessary, amend the draft and lay the amended draft before the House of Representatives; and if the draft as so amended is approved by the House by a resolution supported by the votes of not less than one-half of the total number of members of the House, the Prime Minister shall submit the amended draft to the Yang di-Pertuan Agong.
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> [45] As submitted by the learned Senior Federal Counsel, the decision of the House of Representatives is constitutionally protected by virtue of Article 63(1) of the Federal Constitution which reads:
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> > The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court.
>
> [46] A judicial review by the courts in matters pertaining to the delimitation exercise would be an encroachment of a function constitutionally mandated by the Federal Constitution. The delimitation exercise is a process which will by ultimately decided by the House of Representatives. This court in the case of *Pengerusi Suruhanjaya Pilihanraya Malaysia v. See Chee How & Anor* [2015] 8 CLJ 367 explained the rationale of the review and the enquiry:
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> > [57] Having regard to the legislative scheme of Part II of the Thirteenth Schedule, it is clear that the purpose behind the requirement to publish the notice under section 4(a) is merely to kick-start the process of public consultation between the EC and the registered voters. The process does not end with the publication of the notice. It is only the beginning of the process. The consultation process itself will take place at the enquiry held under section 5(b) of the Thirteenth Schedule. This is the proper forum to trash out any objections to be proposed recommendations, and not the court

…

[63] It is not hard to understand why it is made mandatory for the EC to hold an enquiry under section 5(a) upon receiving any representation of objection to the proposed recommendations. It is to give the voters, who have a stake in the election process, to argue for a revision of the proposed recommendations or even to drop any of the recommendations before they are passed into law by the House of Representatives.

[47] Thus, it is clear that Article 113 to the Federal Constitution has entrusted it upon the 1st Respondent to undertake the delimitation process within the framework of the said Article. The 1st Respondent's findings and proposed recommendations are not binding or have any legal effect as the proper authority for deciding on the delimitation of constituencies is the House of Representatives. Therefore, applying the above principle to the facts of the present case, we held that the findings and recommendations of the 1st Respondent did not come within the ambit of Order 53 ROC and that the learned High Court Judge had gravely erred in granting leave.

[39] In the second case, *M Kula Segaran v. Suruhanjaya Pilihan Raya Malaysia*[8], the appellants appealed against the refusal of the High Court to grant leave to commence judicial review. The appellants sought, *inter alia*, for an order of *certiorari* to quash the second notice issued by the Election Commission on 8 March 2017. The Court of Appeal dismissed the appeal, holding that an "action" or "omission" is only actionable under O. 53 r. 2(4) of the Rules of Court 2012 if such action or omission has binding effect and adversely affects the constitutional rights of a person:

[34] Tindakan Perayu-Perayu untuk mencabar proses yang sedang dijalankan oleh SPR adalah pra-matang ("premature"). Pada peringkat ini, fungsi SPR hanya mengesyorkan penyempadanan semula Bahagian-Bahagian Pilihanraya untuk dikemukakan kepada Parlimen. Pada pandangan kami, Perayu-Perayu bersilat di gelanggang yang salah.

[35] Kami telah memberi pertimbangan kepada hujah-hujah peguam bela terpelajar Perayu-Perayu bahawa Aturan 53 Kaedah 2(4) KKM 2012 juga meliputi "tindakan atau peninggalan" dan bukan hanya terhadap "keputusan". Perkataan-perkataan "tindakan atau peninggalan" telah dibawa masuk melalui KKM 2012 yang mulai berkuatkuasa pada 1.8.2012. Sebelum ini, di bawah Kaedah-Kaedah Mahkamah Tinggi 1980, Aturan 53 Kaedah 2(4) hanya menghadkan "keputusan" oleh sesuatu badan awam sahaja yang tertakluk kepada prosiding semakan Kehakiman. Kami berpandangan isu ini adalah penting dan utama dalam menentukan hala tuju rayuan Perayu-Perayu. Persoalan yang timbul ialah adakah syor-syor penyempadanan semula yang dicadangkan oleh SPR terjumlah kepada sesuatu "tindakan atau peninggalan" yang boleh tertakluk kepada prosiding semakan Kehakiman.

[36] Sebagaimana dinyatakan di awal Penghakiman ini, isu yang sama telah dihujahkan oleh Dato' Amarjeet Singh dalam kes *Chan Tsu Chong*, *supra*, bahawa syor-syor penyempadanan semula Bahagian-Bahagian

A Pilihanraya yang dicadangkan oleh SPR bukanlah merupakan tindakan yang mempunyai kesan perundangan dan ia tidak mengikat sesiapa. Syor dan cadangan SPR tersebut tidak menggugat hak-hak Perayu-Perayu di bawah mana-mana undang-undang. Dengan perkataan lain, hanya "tindakan" atau "peninggalan" yang memberikan kesan yang mengikat dan menggugat hak-hak keperlembagaan seseorang sahaja yang terjumlah
B kepada "tindakan" atau "peninggalan" yang tertakluk kepada prosiding semakan Kehakiman di bawah Aturan 53 Kaedah 2(4).

[40] I am of course bound by these decisions of the Court of Appeal, and therefore found that the State of Selangor was not entitled to challenge the constitutionality or reasonableness of the proposed recommendations issued
C by the Election Commission by reason that they have failed to adhere to the principles set out in s. 2(c) or s. 2(d) of the Thirteenth Schedule to the Federal Constitution. Even though the scope of the O. 53 r. 2(4) has been widened pursuant to P.U.(A) 232/2012 to encompass actions and omissions (in addition to decisions), such actions and omissions must be those that have
D binding effect and which adversely affects the rights of the applicant. The proposed recommendations of the Election Commission contained in a notice published pursuant to s. 4 of the Thirteenth Schedule do not have such effect.

[41] The analysis thus far would be sufficient to dispose of the applicant's
E first ground of challenge. Nonetheless, in the interests of completeness, I address in the following paragraphs the issue of non-justiciability followed by the issue of the proper forum.

Non-justiciability

F **[42]** It was advanced for the respondents that the discretion given to the Election Commission under the Federal Constitution to undertake a review of the constituency boundaries and to recommend changes to the division of constituencies' boundaries is not a discretion whose exercise is amenable to curial intervention. I discern from the submissions of counsel that there are
G two reasons put forward as to why this is so:

(a) the first is that, taking into account the nature and history of the relevant provisions of the Federal Constitution, the discretion conferred upon the Election Commission to review and recommend in art. 113(2) were not intended, as a matter of the proper construction of those relevant
H provisions of the Federal Constitution, to be a discretion that is subject to the supervisory powers of court; and

(b) the second reason is that the delimitation of constituencies is an exclusive remit of the Legislature, and any judicial interference with the manner in which the Election Commission has taken into account the
I principles set out in s. 2 of the Thirteenth Schedule would contravene the doctrine of separation of powers.

[43] I deal with each of these reasons in turn.

[44] Dato' Amarjeet argued that the approximately equal principle is but one of the four principles in s. 2 of the Thirteenth Schedule to be taken into account by the Election Commission in devising its recommendations in the delimitation process. Section 2 makes allowances for flexibility and room to accord priority to each of the principles in any manner it considers fit after taking into consideration reasons or factors that may result in impracticality. To this extent, I am in full agreement with his submissions.

[45] Dato' Amarjeet further submitted that the discretion imparted upon the Commission by the Constitution to make recommendations that take into account the four principles, is, upon the true construction of s. 2 and art. 113(2), an unfettered discretion. In support of this proposition, I was referred to the history of s. 2(c) of the Thirteenth Schedule. Prior to 1973, there was a limit as to how few electors may be contained in a rural constituency. When the Thirteenth Schedule was introduced in 1962, the number of electors in any particular rural constituency cannot be less than half that of any urban constituency. Paragraph (c) of s. 2 previously read as follows:

> (c) the number of electors within each constituency ought to be approximately equal except that, having regard to the greater difficulty of reaching electors in the country districts and the disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies, to the extent that in some cases a rural constituency may contain as little as one half of the electors of any urban constituency;

[46] With the amendment in 1973, s. 2(c) now reads:

> (c) the number of electors within each constituency in a State ought to be approximately equal except that, having regard to the greater difficulty of reaching electors in the country districts and the other disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies;

[47] The removal of the one half restriction was explained by the then Prime Minister in the Dewan Rakyat in the following terms:

> Huraian bagi Rang Undang-undang ini menerangkan dengan panjang lebar tujuan tiap-tiap satu Fasal dalam Rang Undang-undang ini. Saya tidaklah hendak mengambil masa Dewan ini dengan mengulangi huraian itu tetapi saya suka hanya hendak membuat penjelasan-penjelasan tertentu mengenai perkara-perkara yang berikut:
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> ...
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> (3) Pindaan kepada Jadual Ketiga belas adalah juga termasuk suatu pindaan bagi memotong perkataan-perkataan "supaya pada setengah-tengah tempat, suatu bahagian pilihanraya di luarbandar boleh mengandungi hanya satu perdua daripada bilangan pengundi-

> pengundi dalam sesuatu kawasan pilihanraya di bandar" yang terdapat dalam perenggan (c) seksyen 2 Jadual itu. Pindaan ini ialah untuk memberikan peluang yang lebih luas kepada Suruhanjaya Pilihanraya menggunakan budibicaranya dalam menentukan langkah-langkah mengenai imbangan yang patut diberi kepada kawasan luar bandar yang mana, oleh kerana keadaan-keadaan yang tertentu, mengalami kekurangan jika dibandingkan dengan kawasan bandar.
>
> Ahli-ahli Yang Berhormat tentulah faham bahawa bebanan tanggungjawab Ahli-ahli yang mewakili kawasan pilihanraya luar bandar yang luas seperti Ulu Kelantan atau Kuala Lipis ataupun kawasan saya sendiri di Pekan adalah jauh berbedza dengan Ahli dari Bungsar ataupun Bukit Bintang. Kesulitan perhubungan dengan penduduk-penduduk yang diam di kampung-kampung yang terpencil memerlukan penyemakan atas keadaan yang berlaku sekarang bagi penyusunan semula kawasan pilihanraya supaya membolehkan Wakil Rakyat memberikan perhatian dan layanan yang lebih saksama kepada pengundi-pengundi mereka.[9]

[48] It is clear to me that the amendment was intended to give the Election Commission a wider discretion by the removal of the one-half restriction. What is less clear is whether – as argued on behalf of the respondents – the Constitution confers an unfettered discretion.

[49] I am of the view there is nothing in the proceedings of Parliament recorded in the Hansard that establishes that this is the case. Hypothetically speaking, if for any reason recommendations are proposed that do not accord with the principles set out in s. 2 – for example, if a constituency boundary is drawn such that it crosses a State boundary – then clearly that proposed recommendation would be in contravention of the provisions of the Federal Constitution. The real question is whether redress can be obtained *via* the courts, or whether it is the exclusive function of the Legislature to review and correct any errant recommendations of the commission.

[50] This point is addressed in the following paragraphs.

[51] The principle of the separation of powers and the immunity of the Parliament and the State Assemblies from judicial intervention is well established in our law. In *Teng Chang Khim v. Badrul Hisham Abdullah & Anor*[10], the Federal Court explained the applicable principles in the following terms:

> [18] The privileges of the Legislative Assemblies of all States in Malaysia are guaranteed by art. 72(1) of the Federal Constitution.
>
> Article 72 - Privileges of Legislative Assembly
>
> (1) The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any Court.
>
> …

[20] The privileges and the powers of Parliament and the State Legislative Assemblies have been discussed in a number of cases by our courts. Suffice to quote two leading cases. The first is *Lim Cho Hock v. Speaker, Perak State Legislative Assembly* [1979] 1 LNS 45; [1979] 2 MLJ 85. There, the Speaker filed a setting aside application on the ground that the court had no jurisdiction to entertain the originating summons filed by the applicant Assemblyman to, *inter alia*, declare the vacancy of the Speaker's seat. In allowing the application, Eusoffe Abdoolcader J (as he then was) held that:

> In the light of these constitutional provisions, it is clear that the two matters raised in these proceedings are for the Assembly to decide and within its exclusive jurisdiction, and not for the courts to determine. Under the *lex et consuetudo parliamenti*, the Assembly has control over its proceedings, procedure and members and may decide questions as to the qualifications and disqualifications. The provisions in the Federal and State Constitutions I have discussed crystallise and encapsulate this important principle of non-justiciability of its intra-mural activities in the courts which may perhaps be appropriately termed the *Bradlaugh* principle, highlighted in the *Bradlaugh v. Gosset* [1984] 12 (QBD) 271.

[21] *Bradlaugh v. Gosset* [1984] 12 (QBD) 271 was decided by the English House of Lords. There, the Speaker of the House prevented the plaintiff, an elected atheist, from exercising his statutory right of making oath by affirmation which was a precondition to his right to participate in proceedings in the House of Commons. The plaintiff was prevented from taking his seat, resulting in his filing an action against the Speaker. Lord Coleridge CJ, in dismissing the plaintiff's claim, held that the courts had no power to interfere in the internal management of the House of Commons.

[22] The second case is *Fan Yew Teng v. Government of Malaysia* [1976] 1 LNS 28; [1976] 2 MLJ 262. There, the plaintiff, a Member of Parliament, sought to challenge in court a motion proposed in the Dewan Rakyat to disqualify him by reason of his conviction and fine exceeding RM2,000. Before he had exhausted his final right of appeal to the Privy Council, Chang Min Tat J (as he then was), dismissed the claim and held that issues pertaining to Members' disqualification were outside the jurisdiction of the court and within the exclusive prerogative of the Dewan Rakyat. His Lordship held:

> The issue in his application is the right of the plaintiff to sit in the Dewan Rakyat and, in my view and with respect, this issue comes fully within the compass of Article 53 and Article 63. The issue therefore involves the proper and reasonable construction of these Articles. The language is plain and unambiguous. Giving the words therein their plain and grammatical meaning, the decision on this issue is for the House to take, it is final when taken and the validity of the proceedings cannot be questioned in any court. These Articles can admit of no other construction.

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> [23] Thus, there can be no doubt that the business of Parliament and State Legislative Assemblies are immune from judicial interference. The courts have no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of Government, namely, the executive, the Legislature and the Judiciary.

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[52] The issue of whether the discretion of the Election Commission in proposing recommendations is justiciable turns on whether the functions of the Commission are, on their true construction, part and parcel of the internal management of Parliament. In *Teng Chang Khim v. Badrul Hisham Abdullah*, the act of the Speaker of the Selangor State Assembly to declare the

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vacancy of the seat held by Badrul Hisham was not carried out during the proceedings of the assembly. Despite this, the Federal Court held that, because it was carried out in pursuance of an express provision of the Selangor Constitution, such act was in exercise of the speaker's functions to regulate the internal affairs of the assembly and was thus immune from

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challenge in court.

[53] In my view, a distinction can be drawn in the circumstances of the present case. The functions of the Election Commission have been clearly spelt out in the Federal Constitution. The parameters within which it is to

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exercise its discretion have also been delimited by the Constitution. Furthermore, nowhere in the Constitution does it provide that the Commission is to be an organ of Parliament and therefore immune from curial supervision.

[54] It is important to appreciate the scheme of the Federal Constitution,

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Part VIII of which deals with the process by which members are elected to Parliament and the State Legislative Assemblies. In my view, the fact that the Federal Constitution provides for the existence of a separate commission to conduct elections (rather than leaving the elected members to regulate elections as part of the business of the respective assemblies) suggests that the

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framers of the Constitution had intended for the Election Commission to be independent of Parliament, even if the ultimate decision on the delimitation exercise is one that is made by the Parliament. That this is so is borne out by the fact that the members of the Commission are appointed by the Yang di-Pertuan Agong pursuant to art. 114(1), and not by Parliament. This, to my mind, is an important indicia of the independent and non-partisan role

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performed by the members of the Election Commission, in much the same way that judges of the superior courts are appointed directly by the Yang di-Pertuan Agong to emphasise the independence of judges from the executive. Furthermore, the Constitution mandates that the Yang di-Pertuan Agong takes into account the importance of securing an Election

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Commission which enjoys public confidence (art. 114(2)).

[55] For this reason, I am of the view that the ability of the courts to supervise the performance of the functions of the Election Commission is not inconsistent with the doctrine of the separate of powers of the various organs of State. This finding is however merely academic, as I have held at para. 40 *ante* that the exercise of the discretion of the Election Commission to frame recommendations to the Prime Minister in exercise of its responsibilities under the Constitution is non-justiciable on the authority of *Chan Tsu Chong v. Peguam Negara Malaysia* and *M Kula Segaran v Suruhanjaya Pilihan Raya Malaysia*.

Not The Proper Forum

[56] It was advanced for the respondents that the proper forum for the complaints of malapportionment and gerrymandering levelled by the State of Selangor ought to be the local inquiries, and not the courts.

[57] The principal – and in my view insurmountable – difficulty with this contention is simply the fact that the Election Commission has, on previous occasions based on the uncontroverted evidence that is before this court, declined to address objections raised at the local inquiries regarding compliance with the principles set out in Thirteenth Schedule.

[58] In the report entitled *Laporan Kajian Semula Persempadanan Mengenai Syor-syor yang Dicadangkan bagi Bahagian-bahagian Pilihan Raya Persekutuan dan Negeri di dalam Negeri Sarawak Kali Keenam*[11], a summary of the objections raised at the local inquiries carried out in respect of the delimitation exercise for Sarawak in 2015 is set out at appendix 1 of the report. This summary records that, where objections have been raised regarding compliance with the principles in the Thirteenth Schedule, regarding the purported failure to use the current electoral roll, or regarding the sufficiency of the information provided, the Election Commission's response was to state:

> Isu-isu yang dibangkitkan tidak mewajarkan SPR untuk mempertimbangkan dan membuat keputusan bagi Siasatan Tempatan ini.[12]

[59] In my respectful view, it would not be open to the Election Commission to take a legal position that is inconsistent with its prior actions, and for this reason, I would not consider the contention that the applicant ought to raise issues relating to compliance with the cardinal principles in s. 2 of the Thirteenth Schedule at the local inquiries as being one that is capable of resisting an application for judicial review.

Summary

[60] To summarise my conclusions on this first ground of challenge: the first point of observation is that it is important to distinguish between the various specific duties of the Election Commission under part VIII of the Constitution. Where the discharge of those duties involve the formulation of

proposed recommendations and the exercise of its discretion to take into account the cardinal principles, the acts undertaken by the Commission are non-justiciable on the authority of *Peguam Negara Malaysia v. Chan Tsu Chong* and *M Kula Segaran v. Suruhanjaya Pilihan Raya Malaysia*. As the Commission merely provides a recommendation to the Head of the Executive, and because final decision on the delimitation exercise is undertaken by Parliament, compliance with the terms of the Constitution in such matters (including compliance with the cardinal principles of s. 2) are entirely the province of the Legislature.

[61] On the other hand, there are other matters mandated by the terms of the Constitution, such as the obligation to hear representations from those qualified to object and the obligation to conduct local inquiries. Senior Federal Counsel has not sought to argue that these fall outside the bounds of judicial supervision. My view is that these other functions and obligations, because they do not relate to the formulation and provision of recommendations to the executive for final decision by the Legislature, are subject to judicial review. That this is so does not contravene the doctrine of separation of powers, due to the nature of those functions performed by the Election Commission and based on the true construction of the Federal Constitution.

[62] The distinction between the nature of the particular duties of the Election Commission are important to bear in mind, when considering each specific ground of challenge.

Ground 2: The Purported Failure To Use The Current Electoral Rolls

[63] For the purposes of devising its proposed recommendations in the delimitation exercise, the Election Commission has used the Principal Electoral Rolls for the Year 2015 (the "principal roll"). The principal roll was published in the *Government Gazette* on 13 May 2016.

[64] Under s. 3 of the Thirteenth Schedule, the Election Commission must refer to the "current electoral rolls" to ascertain the number of electors for the purposes of its review of the constituency boundaries:

> 3. For the purposes of this Part, the number of electors shall be taken to be as shown on the current electoral rolls.

[65] It is not in dispute that the Supplementary Electoral Roll for the First Quarter of 2016 (the "first supplementary roll") was published on 19 July 2016 and the Supplementary Electoral Roll for the First Quarter of 2016 (No. 2) (the "second supplementary roll") on 20 July 2016.

[66] It was advanced for the applicant that in coming up with its proposed recommendations published in the notice of 15 September 2016, the Commission had not used the current electoral rolls, and that this rendered the proposed recommendations invalid.

[67] In order to be able to publish its proposed recommendations on the delimitation exercise, the Election Commission must necessarily have commenced work before the date of publication of the proposed recommendations.

[68] The evidence put forward on behalf the respondents showed that a meeting was held on 14 July 2016 at the secretariat of the Commission. The minutes of this meeting described it as "Mesyuarat Penyelarasan Urusan Kajian Semula Persempadanan Bahagian-bahagian Pilihan Raya bagi Negeri-negeri Tanah Melayu dan Sabah". The meeting was chaired by the Secretary to the Commission, the third respondent in this action. The minutes recorded that the principal roll (published, it will be remembered, on 13 May 2016) would be used as a basis for the preparation of the proposed recommendations in relation to the delimitation exercise.

[69] On 19 July 2016, a meeting of the Election Commission was held. The meeting was informed of the meeting chaired by the Secretary held five days previously. The Commission took note, *inter alia*, of the proposal that the s. 4 notice be issued in September 2016 and of the proceedings of the Mesyuarat Penyelarasan chaired by the Secretary.

[70] I am satisfied that the review exercise had been commenced on 14 July 2016. Even though the Secretary to the Election Commission is not a member of the Commission, the Commission is empowered to employ persons to assist it in the discharge of its functions (see art. 115(1)). There is nothing, in my view, in the Federal Constitution that would prevent the Commission from delegating the function of commencing a review exercise to its Secretary, or from subsequently ratifying the acts of the Secretary in commencing the review exercise.

[71] Accordingly, at the point the review exercise was commenced on 14 July 2016, the current electoral roll was the principal roll. Neither the first supplementary roll nor the second supplementary roll had been published yet as at that date. The applicable date for the purposes of s. 3 of the Thirteenth Schedule must necessarily be the date the review exercise was commenced, as it would not be possible for the date to be the date of the s. 4 notice, for the simple reason that significant work would have to be undertaken even prior to devising the proposed recommendations.

[72] For this reason, the provisions of art. 113(9) (stating that the date of commencement of a review shall be the date of publication in the *Federal Gazette* of the s. 4 notice) applies only in relation to, and for the purposes of, the construction of arts. 113(2) and 113(3A). Thus the date of publication in the *Gazette* of the s. 4 notice is to be used for the purposes of calculating the two year period within which a delimitation exercise must be completed and for the purposes of determining the eight-year period between the completion of a delimitation exercise and the commencement of the next. By contrast,

for the purposes of s. 3 of the Thirteenth Schedule, the relevant date would be the date on which the Commission actually commences its work for the purposes of kick-starting the periodical review process.

[73] Even though s. 3 makes reference to the "current electoral rolls", I am of the view that the word "rolls" here applies to both the singular and the plural. This is a matter of the proper construction of the Constitution. The Thirteenth Schedule to the Constitution specifies the applicable interpretation provisions, and here words in the plural are to be construed as including the singular.

[74] Common sense also dictates that this construction be adopted. Supplementary electoral rolls are published on a quarterly basis. A supplementary electoral roll would record the electors who have applied to be registered for the first time, and electors who have applied to change their registration area to a new locality[13]. Only changes to the principal electoral roll are recorded in a supplementary electoral roll.

[75] Thus, for as long as no supplementary electoral roll has been published, the current electoral roll would be the latest principal electoral roll that had been published. Once a supplementary has been published for the first quarter in the current year, then the current electoral rolls would comprise the principal electoral roll, read together with that supplementary electoral roll. It is for this reason that the "current electoral rolls" can mean either a single roll or multiple rolls.

[76] This position is reflected in reg. 24 of the Elections (Registration of Electors) Regulations 2002, which provides:

> Regulation 24. Merger of principal electoral roll and supplementary electoral roll
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> The Chief Registrar shall, after the revision of the principal electoral roll and the certification of the supplementary electoral roll, merge the principal electoral roll with the supplementary electoral roll and re-certify the rolls which have been so merged after which the re-certified rolls shall become the principal electoral roll for that year.

[77] I therefore dismissed this second ground for challenge.

Ground 3: The Use Of An Invalid Electoral Roll

[78] It was not in dispute that the electoral roll relied upon by the Election Commission for the purposes of its proposed recommendations in the s. 4 notice did not record the addresses of all the electors in the State of Selangor. Evidence was led that there were some 136,272 voters whose addresses are not recorded in the electoral roll.

[79] The applicant contended that, as a result of the reliance on this purportedly defective roll, the s. 4 notice ought to be set aside and the Election Commission ordered to republish a fresh notice based on a complete electoral roll that records the addresses of all the electors in the State of Selangor.

[80] The court was invited by the applicant to draw an inference that, among others: A

> The Election Commission had arbitrarily assigned at least 136,272 voters into localities, polling districts, state constituencies and parliamentary constituencies

[81] Based on the evidence that was before the court and after taking into account the submissions of counsel, I find that: B

(a) the electoral roll relied upon for the purposes of the s. 4 notice indeed does not have the complete street addresses of all the electors in the State of Selangor. It does, however, have the locality codes for each elector; C

(b) it is likely that, on a balance of probabilities, the addresses of the electors in question were available to the Election Commission at the time they were registered as voters and when the relevant locality codes were assigned to them;

(c) even though: D

(i) the current Chairman of the Commission (the second respondent in this action) had stated that the addresses for the affected electors were extirpated in the course of migration to a computerised system where only the locality data was retained for some electors[14]; and E

(ii) this evidence was disputed by the previous Chairman of the Commission, Tan Sri Ab Rashid bin Ab Rahman, who averred that no such addresses were destroyed under his watch,

nonetheless, the question of whether or not the information relating to the addresses were destroyed does not affect the determination of this third ground of challenge; F

(d) in a delimitation exercise, the locality code of an elector does not change[15]. While it may be possible that in a delimitation exercise a particular locality is reassigned to another polling district, or that the polling district to which a locality belongs is reassigned to another State or parliamentary constituency (thereby changing the constituency of the elector in question), the elector always remains in the same locality where he or she had been registered. An elector's locality may however change where he or she makes an application informing of a change in address, where a complaint is made that his or her address or locality has been incorrectly recorded, or pursuant to an exercise to alter the polling district boundaries under s. 7(2) of the Elections Act 1958. Each of these is distinct from a delimitation exercise conducted pursuant to art. 113(2) of the Federal Constitution; and G H

(e) because the Commission has the locality codes for all electors and because the granularity of the delimitation exercise does not go beyond a locality (which is to say that there is no unit of measure that is smaller I

or more detailed than a locality), the locality codes are sufficient in order for the Election Commission to discharge its obligations under Part VIII of the Federal Constitution.

[82] These reasons would be sufficient to have disposed of the applicant's third ground of challenge.

[83] In the case the case of *Peguam Negara Malaysia v. Chan Tsu Chong*, a similar challenge was mounted by the respondents there against the reliance on the electoral roll that did not record or did not completely record the addresses of all the electors in the State of Melaka. The Court of Appeal found as follows:

> [54] Learned Counsel for the Applicants argued in submission that the 1st Respondent did not possess the correct date when assigning voters to the appropriate polling districts or maintaining the voters in the respective polling districts when conducting the delimitation exercise.
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> [55] We were of the considered view that in determining the issue we could not ignore section 9A of the Elections Act 1958 which reads:
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> > After an electoral roll has been certified or re-certified, as the case may be, and notice of the certification or recertification has been published in the *Gazette* as prescribed by regulations made under this Act, the electoral roll shall be deemed to be final and binding and shall not be questioned or appealed against in, or reviewed, quashed or set aside by, any court.
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> [56] The Federal Court, in *Muhammad Sanusi Md Nor v. Mohd Tajuddin Abdullah & Yang Lain* [2009] 1 CLJ 1, held once the electoral roll has been certified or re-certified, as the case may be and published in the *Gazette*, the electoral roll shall be deemed to be final and binding and cannot be questioned in any court:
>
> > [15] Pada hemat kami adalah jelas dari peruntukan di atas bahawa hak untuk menimbulkan apa-apa isu atau bantahan terhadap daftar pemilih perlu dilaksanakan sebelum ianya diperakui atau diperakui semula dan sebelum notis perakuan tersebut diwartakan
> >
> > …
> >
> > [21] Jelas bagi kami bahawa daftar pemilih adalah muktamad dan tidak boleh dipertikaikan di dalam mana-mana mahkamah. Begitulah maksud dan hasrat s. 9A APR 1958 yang telah dihuraikan di atas.
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> [57] The first respondent in this delimitation exercise had used the Electoral Roll which has been certified and gazetted. The law is explicit that once the Electoral Roll has been certified and gazetted it shall be deemed final and cannot be questioned by any court.

[84] Thus the correctness of an electoral roll cannot be subject to any challenge in court, even where the roll may not completely record the addresses of all the electors in a unit of review. This court is of course bound

by the decision of the Court of Appeal in *Peguam Negara Malaysia v. Chan Tsu Chong*. This is an additional reason why the State of Selangor's third ground of challenge was dismissed.

Ground Four: Insufficiency Of Information

[85] In the final ground of challenge, the State of Selangor claimed that there was inadequate information and insufficient particulars set out in the s. 4 notice, which impaired the rights of voters to make meaningful representations in response to the notice and which made the right to make such representations merely illusory. This, it was claimed, violated the rules of natural justice and the legitimate expectation of voters in the State of Selangor, the local authorities and the Government of the State.

[86] The following were cited as instances of the difficulties faced by a voter:

(a) the draft constituencies plan included in the s. 4 notice only showed the proposed boundaries, without any superimposition of the existing constituency boundaries. This, it was argued, made it difficult for a voter to understand the changes to the boundaries that were being proposed;

(b) the cost of the electoral roll for Selangor (which was shown, in the course of oral submissions, to be RM349), was said to be prohibitively expensive for the average voter and would effectively render the electoral roll inaccessible to him or her;

(c) a voter would not know where his or her polling district is located, based on the information provided in the proposed recommendations. Related to this, is the fact that the draft constituencies plan did not show the location and boundaries of polling districts, but only depicted the boundaries of the Parliamentary and State constituencies;

(d) a voter would not have been provided with information showing the location of administrative facilities (such as schools, district offices and other infrastructure ordinarily used as registration and polling centres) in each Parliamentary and State constituency;

(e) the proposed recommendations did not show which Parliamentary and State constituency are categorised as urban, semi-urban or rural, which in turn prevented a voter from ascertaining adherence to the approximately equal principle in s. 2(c) of the Thirteenth Schedule;

(f) information regarding the land mass of each Parliamentary and State constituency was not provided, which prevented a voter from ascertaining how the Election Commission has calculated "a measure of weightage for area" in accordance with s. 2(c); and

(g) the local Government boundaries were not shown, which made it difficult to ascertain whether the principle in s. 2(d) relating to the maintenance of local ties has been adhered to.

[87] Having considered the evidence before me and the submissions of counsel, I am of the view that this fourth ground of challenge fails, for the reason that the information that has been provided is adequate in order that representations be made to the Election Commission in response to the proposed recommendations. Evidence was led on behalf of the applicant that the level of detail in the proposed recommendations and the manner in which such information had been set out fell far short of comparable publications made by UK Boundaries Commission and by the Redistribution Committee for the Northern Territory, Australia. I do not necessarily disagree with these observations, but I remind myself that the object of the court's inquiry was not whether the Election Commission has adhered to international best practices for transparency in its proposed recommendations, but rather whether it had committed a reviewable error in failing to provide information critical to an elector to make an informed representation at the local enquiry process. This is a far lower standard to which to adhere.

[88] The following table addresses the specific contentions of the applicant regarding the sufficiency or otherwise of the information provided. The letters of the rows in the table correspond to those of the subparagraphs in para. 86 *ante*.

(a) The draft constituencies plan only showed the proposed boundaries, without any superimposition of the existing	I am satisfied that the changes to the proposed boundaries can be obtained by comparing the second schedule to the proposed recommendations[16] (which sets out the proposed constituency polling districts in each constituency and the number of electors in each polling district), where the proposed polling districts are shown, against the document entitled "Daftar Pemilih Yang Diguna Pakai untuk Kajian Semula Persempadanan",[17] which shows theexisting polling districts and number of electors. Although the comparison is not in my view one that is easily undertaken (particularly for multiple constituencies), the fact remains that such information has been given, and that the manner in which the information has been presented in and of itself does not justify the grant of an order for judicial review.
(b) The cost of the electoral roll was said to be prohibitively expensive for the average voter.	In my view, the cost of RM349 for the electoral roll for the whole of the state of Selangor is not prohibitively expensive. The average voter would not, of course, require the whole electoral role, and may in fact conduct an online search at http:// pengundi.spr.gov.my/ without charge.

(c) A voter would not know where his or her polling district is located. The draft constituencies plan does not show the location and boundaries of polling districts.	The location of a voter's polling district is not, in my view, material information to the voter. In a delimitation exercise, what is significant are the constituency boundaries. An alteration to a voter's polling districts can only take place pursuant to an exercise carried out under section 7 of the Elections Act 1958. In any event, information regarding a voter's locality and polling district can be obtained *via* the online search function made available by the Commission.
(d) A voter has not been provided with information showing the location of administrative facilities in each parliamentary and state constituency.	The administrative facilities here refer to infrastructure necessary for registration and polling (see section 2(b) of the Thirteenth Schedule). In the present delimitation exercise, the changes proposed involve (a) changes in the parliamentary constituency boundaries by the reassignment of the whole or a part of a state constituency into or out of a parliamentary constituency or (b) changes in the state constituency boundaries by the reassignment of polling districts. I am satisfied by the explanation provided on behalf of the respondents that neither of these changes has any effect on the administrative facilities.
(e) The proposed recommendations do not show which parliamentary and state constituency are categorised as urban, semi-urban or rural, which in turn prevents a voter from ascertaining adherence with the approximately equal principle in section 2(c).	I am of the view that the relative state of development in a constituency is a matter that a voter can take cognisance of without the need for any categories to be provided by the Election Commission.
(f) Information regarding the land mass of each parliamentary and state constituency is not provided, which prevents a voter from ascertaining how the Election Commission has calculated "a measure of weightage for area" in accordance with section 2(c) of the Thirteenth Schedule.	The real issue is not the manner in which the Commission has undertaken the calculations in order to ascertain the "weightage for area" but the distinct (*albeit* related) question whether there has been sufficient information provided in the proposed recommendations to enable a voter to make an assessment whether the cardinal principles have been adhered to, and to make meaningful representations as a consequence. The reasons behind the proposed recommendation is not one that the Commission is obliged to disclose under the Federal Constitution[18] and so it would follow that the manner of calculation would similarly not be needed to be set out in the proposed recommendations. The second schedule to the proposed recommendations sets out the number of electors comprised in each state and parliamentary constituency. The proposed

	recommendations are accompanied by a 1:160,000 scale map (which may be inspected by the public at 22 locations in Selangor for a period of one month following the publication of the notice). This map demarcates the proposed constituency boundaries. In my considered opinion, even though the map does not specify the precise land mass of the constituencies, the depiction of the proposed boundaries would be sufficient to provide a visual representation of the approximate relative sizes of the constituencies. This, together with the information regarding the size of the electorate in each constituency, amounts to sufficient information for meaningful representations to be made.
(g) The local government boundaries are not shown, which makes it difficult to ascertain whether the principle in section 2(d) relating to the maintenance of local ties has been adhered to.	The non-inclusion of the local government boundaries do not, in my view, prevent meaningful representations from being made in connection with the principle in section 2(d). Taking the example of the Sarawak delimitation exercise in 2015, the Election Commission had agreed to make changes following some of the objections raised. The reasons for these changes included the maintenance of cultural ties[19] and increased efficiency of local administration[20]. This palpably demonstrates that representations can be made based on the level of information being provided, and changes were in fact made to the proposed recommendations consequent to those representations. While this does not mean that the information cannot be better presented or provided, the object of the inquiry before this court is confined to the question whether the non-inclusion of the information justifies curial intervention. In my view, it does not.

[89] In the following paragraphs, I address particular points raised by the applicant to the extent that they have not been addressed in the preceding table.

Evidence From Affected Voters

[90] In the case of *Pengerusi Suruhanjaya Pilihan Raya Malaysia v. See Chee How & Anor*[21], the applicants there had argued that the failure to include the information relating to the land mass of the proposed constituencies was a reviewable error, as it did not afford the electorate with an informed basis with which to raise an objection. The Court of Appeal had held that one of

the reasons the challenge failed was that no evidence was tendered on behalf of the affected voters that the purported paucity of information had deprived them of their constitutional right to raise objections:

> [72] In the present case the respondents have not made available any evidence by eligible or affected voters to confirm factually that due to the lack of detailed particulars in the notice, they have not been able to make effective representations under s. 5(b) of the Thirteenth Schedule and that their right to exercise that right has been rendered ineffective and illusory.
>
> [73] If any authority is required for the point, the following passage in the judgment of Edgar Joseph Jr SCJ delivering the judgment of the Federal Court in *Lori (M) Bhd (interim receiver) v. Arab-Malaysian Finance Bhd* [1999] 3 MLJ 81 at p 96; [1999] 2 CLJ 997 at p. 1006 is instructive:
>
> > The second point to note regarding this part of the case is that, it is an elementary proposition sometimes overlooked with resulting confusion and possible injustice that where statements are made by a deponent, based on information and belief *these ought not to be looked at all, unless the court can ascertain not only the source of the information and belief but also unless the deponent's statement is corroborated by someone who speaks from his own knowledge* (see *In re JL Young Manufacturing Ltd Co* [1900] 2 Ch 753, at p 754 per Lord Alverstone CJ, applied by the old Federal Court in *Cantrans Services (1965) Ltd v. Clifford* [1974] 1 MLJ 141, at p 143). (emphasis added.)
>
> [74] Having regard to all the circumstances of the case, we are inclined to think that the allegation of impairment of right is a red herring thrown at the court for the purpose of casting doubts on the *bona fide* of the EC in carrying out the delimitation exercise.

[91] It was advanced for the State of Selangor that, by contrast, there are in the present case affidavits sworn by electors in the affected constituencies as well as affidavit testimony from analysts proclaimed to be experts in the field.

[92] While I agree that the evidence has been forthcoming from the voters who claim to have been adversely affected by the nature and quality of the information and the manner in which it has been provided in the proposed recommendations, I am nonetheless of the view that the information was not inadequate and thus did not justify the intervention of this court.

The Duty To Consult And The Sedley Criteria

[93] It was also advanced for the applicant that, because the information provided by the Election Commission in its proposed recommendations did not permit meaningful consideration and response, the Commission fell short in discharging its duty to consult. As I have held that the information provided has been adequate, this question does not in my view arise.

A However, it is important to appreciate that this is not a case to which the *Sedley* criteria-the essential requirements for a public consultation process-applies.

[94] The *Sedley* criteria was advanced in argument in the case of *R v. Brent LBC, ex p Gunning*[22], by counsel in that case, Sir Stephen Sedley
B (subsequently Sedley LJ). In order for a public authority to sufficiently discharge its duty of public consultation, the following requirements must be fulfilled:

(a) the consultation had to take place when proposals were at a formative
C stage;

(b) sufficient reasons had to be given for any proposal to permit intelligent consideration and response;

(c) adequate time had to be given for consideration and response; and

D (d) the product of consultation had to be conscientiously taken into account in finalising any statutory proposals.

[95] These principles have been accepted by the courts in a long line of cases and endorsed recently by the UK Supreme Court in *R (Moseley) v. Haringey LBC*[23].

E **[96]** While the correctness of the *Sedley* criteria cannot be in doubt, it has to be appreciated that these requirements are only triggered when there arises a duty to undertake a public consultation. This requirement would most usually arise by statute. For example, in *R (Moseley) v. Haringey LBC*, two single mothers had applied for judicial review of the lawfulness of the
F consultation undertaken by a local authority to reduce the amount of relief available from the liability to pay council tax. Before a local council may implement the scheme, it was expressly required by the applicable statute to "consult such other persons as it considers are likely to have an interest in the operation of the scheme".

G **[97]** The present case can be distinguished, because the Federal Constitution does not require a full public consultation process to be undertaken before the proposed recommendations of the Election Commission may be submitted to the Prime Minister. Rather, the process is much more limited in scope, with specific procedures that have been enacted
H in the Constitution itself. Under the Thirteenth Schedule, the duty of the Commission is to receive representations objecting to the proposed recommendations from parties that are entitled to object. Having received such objections, the Commission is to hold a local enquiry for each constituency in respect of which it had received objections. Thus the *Sedley*
I criteria cannot apply in the present circumstances (or at least cannot apply

without modification) because, for example, there is no duty to take into account public opinion prior to the formulation of the proposed recommendations. The limited nature of the enquiry was described by the Court of Appeal in *Pengerusi Suruhanjaya Pilihan Raya Malaysia v. See Chee How* in the following terms:

> [63] It is not hard to understand why it is made mandatory for the EC to hold an enquiry under s. 5(a) upon receiving any representation of objection to the proposed recommendations. It is to give the voters, who have a stake in the election process, to argue for a revision of the proposed recommendations or even to drop any of the recommendations before they are passed into law by the House of Representatives.

Conclusion

[98] The following summarises the decision of this court.

[99] The whole of the application for judicial review was dismissed with no order as to costs. In relation to the specific grounds of challenge:

(a) the discharge by the Election Commission of its duties involving the formulation of proposed recommendations and the exercise of its discretion to take into account the cardinal principles prescribed in s. 2 of the Thirteenth Schedule to the Federal Constitution are non-justiciable on the authority of *Peguam Negara Malaysia v. Chan Tsu Chong* and *M Kula Segaran v. Suruhanjaya Pilihan Raya Malaysia*. The Commission merely provides a recommendation to the Head of the Executive, while the final decision on the delimitation exercise is undertaken by Parliament. Therefore, compliance with the terms of the Constitution in such matters (including compliance with the cardinal principles) are entirely the province of the Legislature. Accordingly, the first ground of the judicial review application was dismissed for the reason that the matter was not amenable to judicial review;

(b) the Election Commission had not erred in using the principal roll as its basis for the delimitation exercise because:

(i) the applicable date for the purposes of determining the "current electoral rolls" within the meaning of s. 3 of the Thirteenth Schedule must necessarily be the date the review exercise was actually commenced, and not the date of the s. 4 notice. The current electoral roll at that time was the principal roll published on 13 May 2016; and

(ii) the term "current electoral rolls" applies to both the singular and the plural, based on the proper construction of the Federal Constitution, and hence the Commission was entitled to disregard the supplementary electoral rolls published after it had commenced work on the delimitation exercise;

(c) the Election Commission had not erred in using an electoral roll that did not completely record the addresses of all the electors in the State of Selangor because:

(i) on the facts, locality codes are sufficient in order for the Commission to effectively carry out the delimitation exercise; and

(ii) the correctness of an electoral roll cannot be subject to any challenge in court due to s. 9A of the Elections Act 1958, on the authority of the decision of the Court of Appeal in *Peguam Negara Malaysia v. Chan Tsu Chong*; and

(d) on the facts, the information provided by the Election Commission in its proposed recommendations published pursuant to the s. 4 notice was not inadequate as to warrant curial intervention.

[100] The court records its appreciation to counsel for having undertaken extensive study into the issues raised in this case, for their comprehensive yet succinct written submissions and for their diligence in assisting the court whenever the need arose.

Endnote:

1. [1995] 1 CLJ 609, 1995] 1 AMR 622, [1995] 1 MLJ 281, [1995] 1 MLRA 48
2. [2012] 4 CLJ 478, [2012] 4 MLJ 296, [2012] 4 MLRA 257
3. [2017] 1 LNS 499; [2017] 5 MLJ 63, [2017] 6 MLRA 334
4. [2017] 5 CLJ 595, [2017] 4 MLJ 656
5. *Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals* [2012] 1 CLJ 805; [2011] 6 AMR 381, [2011] 6 MLJ 490, [2012] 2 MLRA 197
6. [1985] 1 CLJ 511; [1985] CLJ (Rep) 122, [1985] 2 MLJ 35, [1985] 1 MLRA 52
7. [2018] 2 CLJ 274; [2017] AMEJ 1492, [2017] MLRAU 477
8. [2018] 5 CLJ 547; [2017] AMEJ 1170, [2017] MLJU 1482, [2017] MLRAU 399
9. Dewan Rakyat Hansard dated 9 July 1973 at pp. 1624 and 1625
10. [2017] 9 CLJ 630; [2017] 6 AMR 746, [2017] 5 MLJ 567, [2017] 5 MLRA 651
11. See p. 91 of encl. 24

12. See pp. 166, 171, 176, 181-184, 187, 193, 196, 198, 200 and 202 of encl. 24
13. See reg. 11 of the Elections (Registration of Electors) Regulations 2002
14. See paras. 10-12 of encl. 31
15. See paras. 47 and 52 of encl. 22
16. Exhibit MAA-2 of encl. 7
17. Exhibit MAA-3 of encl. 7
18. See *Peguam Negara Malaysia v. Nurul Izzah Anwar* (*op. cit*) at para. 40.
19. See for example, exh. AA-33 at p. 168
20. Page 167, *ibid*.
21. [2015] 8 CLJ 367, [2016] 3 MLJ 365
22. (1985) 84 LGR 168
23. [2014] UKSC 56